IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

AS.No. 157 of 1994(B)

OS.108/1983 of PRL.SUB COURT,KOTTAYAM
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APPELLANT: 1st DEFENDANT:

T.A.ABDUL AZEEZ, THAIPARAMBIL, VEROOR MURI,
VAZHAPPALLY KIZHAKKUMBHAGOM VILLAGE.

BY ADV. SRI.K.P.DANDAPANI,K.JAJU BABU

RESPONDENTS: PLAINTIFF & DEFENDANTS 2 & 3
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1. SHRI.MATHAI KURIAKOSE, MANIMURI VADAKKEKARA,
THRIKODITHANAM KARA, THRIKODATHANAM VILLAGE.

2. SRI.S.USMAN, KOCHUPARAMBIL, VEROOR MURI,
VAZHAPPALLY, KIZHAKKUMBHAGOM VILLAGE.

3. SRI.P.J.JAMES, PATHIKKAL,
VEROOR MURI, VAZHAPPALLY, KIZHAKKUMBHAGOM
VILLAGE.

BY

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 19/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

A.S.No. 157 of 1994

Dated this the 19th October, 2007.

J U D G M E N T

The defendant in O.S.No.108/1983, on the file of the Sub Court, Kottayam, is the appellant. The appeal is filed against the decree and judgment passed by the court below allowing the first respondent to recover an amount of Rs.10,464/= with interest. The first respondent was a chitty foreman who was conducting a chitty. Appellant was a subscriber to that chitty. He priced the chitty in the auction conducted on 9.12.1980, and on receiving the amount, he executed a chitty bond on 8.12.1980. It was averred that first defendant paid only three instalments and thereafter he committed default from the 4th instalment onwards. In spite of repeated requests, the amount were not paid. Hence, the suit.

2. The execution of chit amount and receipt of money was admitted. According to the defendant, chit collapsed on account of the default on the part of plaintiff to run the chit. It was contended that he left the locality. It was contended that 4th instalment was paid to the agent of the plaintiff, but he did not get any receipt of the same.

It was contended that first defendant was ready to pay the balance instalments, but whereabouts of the plaintiff was not known to him. Appellant submits that because of the default on the part of the plaintiff, instalment fell in arrears, and hence, he is entitled to Veetha Palisha.

3. Execution of the chitty bond and default were admitted by the defendants. Plaintiff gave evidence to the effect that he terminated chitty, after getting the order from the Chitty Registrar. But that order has not been produced before the court. The Trial Court accepted the evidence of the plaintiff. At the instance of the defendant, Ext.B1 minute was produced, which shows that chitty was terminated on 30th December, 1980. Though no contention was raised in the written statement, at the time of hearing, an argument was advanced that since the chitty was terminated, the foreman has got no right to collect the money. But this is a liability which incurred prior to termination of the chitty. Though appellant claimed that subscription paid by him for four instalments were not given credit to, and that aspect was also considered by the trial court. Ext.A1 shows that amount claimed by the plaintiff is due from the appellant.

4. The learned counsel appearing for the appellant has argued that there is absolutely no justification for awarding interest in this case, because the chitty collapsed only on account of the default of the plaintiff. Being a chitty transaction, the trial court awarded the interest as claimed in the plaint. But future interest was awarded at the rate of 6%. Interest awarded is also correct, and does not call for interference. There is no merit in this appeal, and is only to be dismissed.

In the result, the appeal is dismissed.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

A.S.No.157 of 1994

J U D G M E N T

Dated:19th October, 2007.